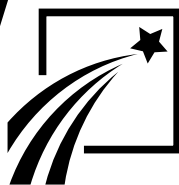
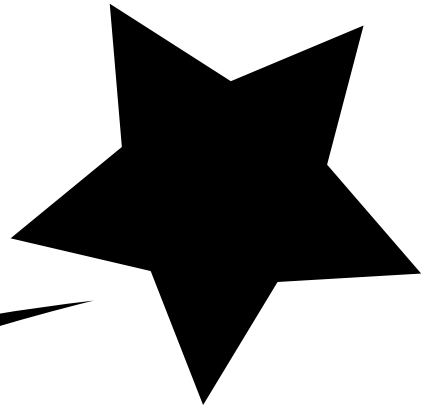


National Environmental Achievement Track Program Description



National
Environmental
Performance Track

THE NATIONAL ENVIRONMENTAL ACHIEVEMENT TRACK PROGRAM DESCRIPTION

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I. INTRODUCTION

The National Environmental Performance Track program is designed to recognize and encourage top environmental performers – those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that benefit people, communities, and the environment.

Our system of environmental protection continues to evolve. There is a growing recognition that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing costs and spurring technological innovation.

Over the last several years, EPA has joined states, businesses, and community and environmental groups in experimenting with new approaches that achieve high levels of environmental protection with greater efficiency. EPA's Common Sense Initiative was designed to improve environmental results by tailoring strategies for six industry sectors. Project XL offers an opportunity to test alternative management strategies that promise better results. The national Environmental Leadership Program and EPA Region I's Star Track program offer new ways to encourage businesses to do better than required. Likewise, many states have developed innovative programs for improving environmental performance.

This program builds upon the lessons EPA has learned from several state leadership programs and from its own efforts. We learned that innovations in environmental management can be used to create strategic business opportunities and advantages while maximizing the health and productivity of our ecosystems and communities. We learned the importance of keeping innovation programs simple and their transaction costs low. We know that we must focus on performance, not just the means of achieving it, and derive measurable results from our programs.

The Performance Track program is the culmination of these efforts. It will recognize innovation, motivate others to improve, and complement existing regulatory activities. It has been designed so that criteria for participation are proportional to the benefits. It will encourage participation by small, medium, and large facilities. It also emphasizes the importance of effective state/EPA partnerships and the need to inform and involve citizens and communities.

EPA will be implementing the National Environmental Performance Track program at two levels. The first level, the *National Environmental Achievement Track* (Achievement Track), is designed to recognize facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems, as well as to encourage them to achieve more by continuously improving their environmental performance and informing and involving the public.

The second level, the *National Environmental Stewardship Track* (Stewardship Track), is still under development. It is being designed to recognize and encourage broader and higher levels of voluntary environmental performance than those expected under the Achievement Track. These may include improvement in several categories of environmental performance; a focus on environmental management and performance with regard to customers, suppliers, and transporters; attention to product stewardship; and even better community engagement and public outreach.

In developing the Achievement Track, EPA has consulted extensively with stakeholders and state environmental agencies. EPA initially proposed to develop a Performance Track program in its report, *Aiming for Excellence*, which it published in July 1999. In March of this year, EPA released a draft program description and held five public meetings across the country on this proposal. In addition, EPA has consulted closely with state officials, including a national forum to discuss state programs, issues, and participation.

This notice announces the National Environmental Achievement Track.¹ EPA plans to launch the Stewardship Track in May 2001. Although this notice focuses on the Achievement Track, a later section describes the concept of the Stewardship Track and the process EPA will use to develop it.

II. THE NATIONAL ENVIRONMENTAL ACHIEVEMENT TRACK

This section describes the criteria a facility will voluntarily meet to qualify for the Achievement Track, the incentives EPA intends to provide, the approach EPA intends to take to implement the program, and how EPA will manage this program with the states.

A. Entry Criteria

To qualify for the Achievement Track, a facility will demonstrate that it:

- C Has adopted and implemented an environmental management system (EMS) that includes the elements specified below;
- C Is able to demonstrate specific environmental achievements and commit to continued improvement;

¹ EPA will also use this program to implement Section 403(a) of Executive Order 13148, which directs EPA to establish a federal government leadership program “to promote and recognize outstanding environmental management performance in agencies and facilities.”

- C Commits to public outreach and performance reporting; and
- C Has a record of sustained compliance with environmental requirements.

1. Environmental Management System (EMS)

A facility will certify that it has an EMS in place.² The EMS will include the elements listed below and will have gone through at least one full cycle of implementation (i.e., planning, setting performance objectives, EMS program implementation, performance evaluation, and management review). A facility that has adopted systems based on EMS models with a Plan-Do-Check-Act framework would meet most of these elements.

EPA recognizes that the scope and level of formality of the EMS will vary, depending on the nature, size, and complexity of the facility. EPA's experience with a variety of programs suggests that these EMS elements are within the capability of small facilities and can be met through a variety of approaches. To help small facilities implement an EMS, EPA will make guidance documents and assistance materials available.

A facility will certify that it has implemented an EMS that includes these elements:

Policy

- A written environmental policy, defined by top facility management, that includes commitments to: (1) compliance with both legal requirements and voluntary commitments; (2) pollution prevention (based on a pollution prevention hierarchy where source reduction is the first choice); (3) continuous improvement in environmental performance, including areas not subject to regulations; and (4) sharing information about environmental performance and the operation of the EMS with the community.

² For purposes of the Achievement Track, an EMS represents an organization's systematic efforts to meet its environmental requirements, including maintaining compliance and achieving performance objectives that may be related to unregulated aspects of the organization's activities.

Planning

- Identification of significant environmental aspects³ and legal requirements, including procedures for integrating anticipated changes to the facility's requirements or commitments into the EMS.
- Measurable objectives and targets to meet policy commitments and legal requirements, to reduce the facility's significant environmental impacts, and to meet the performance commitments made as part of the facility's participation in the program (under Section A.2). In setting objectives and targets, the facility should consider the following criteria: preventing non-compliance, preventing pollution at its source, minimizing cross-media pollutant transfers, and improving environmental performance.
- Active, documented programs to achieve the objectives, targets, and commitments in the EMS, including the means and time-frames for their completion.

Implementation and Operation

- Established roles and responsibilities for meeting objectives and targets of the overall EMS and compliance with legal requirements, including a top management representative with authority and responsibility for the EMS.
- Defined procedures for: (1) achieving and maintaining compliance and meeting performance objectives; (2) communicating relevant information regarding the EMS, including the facility's environmental performance, throughout the organization; (3) providing appropriate incentives for personnel to meet the EMS requirements; and (4) document control, including where documents related to the EMS will be located and who will maintain them.

³ An "environmental aspect" is defined as an "element of an organization's activities, products, or services that can interact with the environment." Facilities are asked to use their list of significant environmental aspects in selecting performance commitments under this program (see Section A.2).

- General environmental training programs for all employees, and specific training for those whose jobs and responsibilities involve activities directly related to achieving objectives and targets and to compliance with legal requirements.
- Documentation of the key EMS elements, including the environmental policy, significant environmental aspects, objectives and targets, a top management representative, compliance audit program, EMS audit program, and overall EMS authority.
- Operation and maintenance programs for equipment and for other operations that are related to legal compliance and other significant environmental aspects.
- An emergency preparedness program.

Checking and Corrective Action

- An active program for assessing performance and preventing and detecting non-conformance with legal and other requirements of the EMS, including an established compliance audit program and an EMS audit program.
- An active program for prompt, corrective action of any non-conformance with legal requirements and other EMS requirements.

Management Review

- Documented management review of performance against the established objectives and targets and the effectiveness of the EMS in meeting policy commitments.

Although a third-party audit of the EMS is not necessary to qualify for the Achievement Track, a facility is asked in the application form if it has undergone such an audit. If it has not, it will have conducted a self-assessment. A facility will retain EMS documentation and provide a summary of its performance, including performance against objectives and targets, and a summary of the results of compliance and EMS audits, in its Annual Performance Report (discussed in Section C.4).

2. Demonstrated Environmental Achievements and Commitment to Continued Improvement

A facility will demonstrate specific environmental achievements and commit to continued improvements in its environmental performance. The framework for reporting on performance is based on the Global Reporting Initiative (GRI), which EPA also has used in Region I's StarTrack program. This framework distinguishes two levels of performance: categories and aspects. A *category* is a class of environmental impacts (e.g., water discharges). An *aspect* is an element of an organization's activities, products, or services that can interact with the environment (e.g., discharges of heavy metals). EPA's approach to reporting is consistent not only with the GRI but with generally accepted EMS practice.

The categories and aspects for use in the Achievement Track program are listed in the *Application Instructions* for the Achievement Track (the *Environmental Performance Table*) and are available on the Performance Track web site (<http://epa.gov/performancectrack>). Three of the categories in the *Table* relate to the use of resources. They are energy use, water use, and materials use. Four of the categories relate to the negative effects of activities or processes. These include air emissions, waste generation, water discharges, and accidental releases. The final two categories relate to efforts to preserve or restore resources and to the environmental performance of products. Within each category, EPA has listed one or more environmental aspects that a facility may choose from in reporting on its performance.

EPA will not specify which categories and aspects a facility should select in making its performance commitments. However, the facility's future performance commitments need to be closely tied to the significant environmental aspects and the related objectives and targets as identified in its EMS. In addition, the facility should take the following factors into account in selecting categories and aspects for future performance commitments:

- C local or regional environmental concerns or priorities;
- C cross-media impacts of performance improvements; and
- C progress that can be made through pollution prevention.

Each applicant will demonstrate past achievements *and* commit to and report on future improvements. To demonstrate past performance, a facility is asked to select at least two environmental aspects from any of the categories in the *Environmental Performance Table* and to describe the improvements in its performance during the current and preceding one year. Small

facilities have the option of documenting improvement for at least one environmental aspect from any category.⁴ Facilities are encouraged to document performance achievements beyond the minimum.

In making future performance commitments, facilities should select at least four environmental aspects, drawn from two or more categories. Small facilities should select at least two aspects from two or more categories. Again, facilities are encouraged to commit to more than the minimum. These commitments should cover the three years that the facility will participate in the Achievement Track (the standard term for participation). The aspects selected for past and future performance may or may not be the same, depending on the facility's priorities and the status of its performance improvement efforts.

In documenting past achievements and committing to continued improvement, a facility will not rely on any actions that represent compliance with existing legal requirements at the federal, state, tribal, or local levels. These improvements will represent actions taken by a facility that go beyond existing legal requirements. A facility will be asked to describe its progress in meeting these commitments in an Annual Performance Report (See Section C.4).

There will be no absolute or relative level of improvement in either past or future performance needed to qualify for the program. EPA is asking each facility to document and commit to a level of performance that is consistent with its own situation, capabilities, and goals. However, each facility is encouraged to commit to significant improvements that it is willing to justify publicly as a participant in the Achievement Track.

EPA encourages each facility to use the results of its participation in EPA, state, and other partnership programs to document its achievements in improving performance. Participation in a partnership program would not on its own qualify a facility, but improvements that occur in the context of such a program would. For example, as a result of participation in EPA's WasteWise, ClimateWise, WAVE (Water Alliances for Voluntary Efficiency), Design for the Environment, or Metal Finishing Strategic Goals programs, a facility may be able to document past performance and

⁴ EPA recognizes that, depending on the nature and extent of a facility's operations, a small facility may have fewer environmental aspects as well as more limited resources for measuring and committing to specific improvements in performance. For purposes of this program, a facility will be considered to be a "small" facility if the company as a whole is a small business as defined by the Small Business Administration (see FR 30386, Vol. 65, No 94, May 15, 2000) *and* if the facility itself employs fewer than fifty full-time equivalent employees. A facility will self-certify as to its status as a small business in the application for admission to the Achievement Track. If a facility is part of a larger company, it is the larger company as a whole that needs to meet the Small Business Administration definition.

commit to future improvement. EPA's Partnership Programs coordinators will advise facilities on the best ways to link efforts in these programs with participation in the Achievement Track.

3. Public Outreach and Performance Reporting

A facility will demonstrate its commitment to public outreach and report periodically on its performance. There is no standard set of outreach activities, beyond what is required in the Annual Performance Report. Each facility's approach to community reporting beyond this Report will depend on its size, scale of operations, and setting.

EPA expects that applicants will already have established a public outreach program. For example, participants in the Responsible Care program or endorsers of the CERES (Coalition for Environmentally Responsible Economies) principles typically have outreach programs that may include a community advisory panel, newsletters, performance reporting, sponsorship of community activities, and other outreach activities. Many small facilities have adopted lower-cost but effective outreach programs.

In the application, each facility will be asked to describe its activities and plans in three areas: identifying and responding to community concerns; informing community members of important matters that affect them; and reporting on the performance of its EMS and other performance commitments. The facility also will be asked to provide a short list of community/local references who are familiar with the facility and to list any ongoing citizen suits against the facility.

During its evaluation process, EPA will list the facility as an applicant on the Performance Track web site. If a facility is accepted, EPA will list it as a participant and make a copy of its application available to the public.

Identifying and Responding to Community Concerns

A facility should be able to demonstrate that it has established mechanisms for identifying and responding to local concerns regarding the environmental effects of its operations. Examples are concerns about emissions, odors, traffic congestion, water discharges, and emergency warnings. At a minimum, a small facility should be able to document that it has designated a point of contact with direct access to facility management and has adopted procedures for responding to questions or concerns of local residents.

Other typical efforts could include a designated community liaison official, periodic public meetings or open houses, and similar mechanisms. The level of public outreach would depend not only on the size of the facility, but also on the degree of community interest and the environmental effects of the facility's operations.

Informing Community Members of Important Matters that Affect Them

Each applicant should describe the mechanisms it uses to inform the community of important issues related to the facility's environmental performance. Many of the mechanisms for identifying and responding to local concerns may meet this objective as well. Open houses, community meetings, web pages, advisory panels, or customer displays could be especially appropriate. Again, these efforts should be appropriate to a facility's size, operations, and setting.

Reporting on the Facility's Performance Commitments

Whatever means a facility employs for community outreach, it should explain specifically how it provides the public with the environmental performance information that it is committed to reporting (described in Section A.2 above). Each facility will provide this information to the local community in its Annual Performance Report.

4. Record of Sustained Compliance with Environmental Requirements

A facility will have a record of compliance with environmental laws and be in compliance with all applicable environmental requirements at the time of application. The facility will maintain its compliance for the duration of its participation in the Achievement Track.

In evaluating the compliance record of an applicant, EPA, along with its state partners, will consult available databases and enforcement information sources. The scope of this screen and the screening criteria are based on the guidelines presented in the Agency's Compliance Screening for Partnership Programs Guidance⁵, with certain design changes appropriate for this program. EPA may later add to or modify these criteria, as needed, and as it develops the National Environmental Stewardship Track.

Participation in the Achievement Track will not be appropriate if the compliance screen shows any of the following, under federal or state law.

Criminal Activity

- C Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the corporation or a corporate officer within the past 5 years.

⁵ This guidance is available at <http://es.epa.gov/oeca/oc/polover.pdf>.

- C Criminal conviction or plea of employee at the same facility for environmentally-related violations of criminal laws within the past 5 years.
- C Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at the same facility for violations of environmental law.

Civil Activity

- C Three or more significant civil violations at the facility in the past 3 years.⁶
- C Unresolved, unaddressed Significant Non-compliance (SNC) or Significant Violations (SV) at the facility.
- C Planned but not yet filed judicial or administrative action at the facility.
- C Ongoing EPA- or state-initiated litigation at the facility.
- C Situation where a facility is not in compliance with the schedule and terms of an order or decree.

In addition, EPA may also consider whether there are significant problems or a pattern of non-compliance in an applicant's overall civil or criminal compliance history.

EPA encourages each facility to assess its own compliance record under these criteria as it makes a decision regarding application to the Achievement Track.

B. Incentives for Participation

To promote participation in the program and the environmental and other benefits that will come with it, EPA intends to offer several incentives and is considering others.

In EPA's March proposal on the Performance Track program, which was the subject of several public meetings and written comment, EPA outlined considerations that would influence its choice of incentives for the Achievement Track. EPA has continued to rely on these considerations. EPA has excluded incentives that would involve a relaxation of substantive standards of performance

⁶The term "significant" with respect to violations or non-compliance refers to how the violation is characterized under the applicable media enforcement response policy, available at <http://www.epa.gov/oeca/main/strategy/>.

or that would require statutory change. Many comments indicated a preference for incentives that apply broadly to different types of facilities; that reduce the reporting, monitoring, and other operating costs of the current system; and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that are necessary for other facilities may not be needed for participants that have met the entry criteria for the Achievement Track. Third, these incentives may offer the opportunity for qualifying facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for participation.

EPA intends to offer several incentives that will be available to participants at the time they enter the program. These include recognition, access to information sources, and program incentives that do not require revision of existing guidance documents or rulemaking. Specifically, these include:

- C An Achievement Track facility will be a low priority for inspection targeting purposes.
- C As a discretionary factor in the assessment of penalties, EPA will consider a facility's good faith participation in the program as an indication of its good faith efforts to comply.
- C Use of the Achievement Track logo at a participating facility, in communications with outside parties about the facility, and in other ways (although not in endorsing products).
- C Listing on the Performance Track web site and other EPA sites, in promotional materials related to Partnership Programs, in feature articles, and in case studies that profile accomplishments.
- C Special recognition for Charter Members at an event to be held in late fall of 2000.
- C Participation in Achievement Track peer exchanges, including special invitation conferences, workshops, and networks, in which facilities share successful practices and receive recognition.
- C Opportunities to be featured in a *Performance Practices Database* EPA is developing.

- C Information sessions with senior EPA officials to share lessons learned, help design the Stewardship Track, and improve the Achievement Track.

Some incentives that EPA is considering would require actions by the Agency to modify existing guidance documents or administrative procedures; the incentives will be available when those steps have been completed. In some cases, other steps also must be taken before a facility may take advantage of the incentives being considered. For example, responsibility for implementing parts of many environmental programs is delegated to states. In such cases, states may need to revise regulations, agree on a revised delegation package, re-issue permits, or take other actions.

EPA would make the following incentives available to facilities in the Achievement Track through administrative actions (other than rulemaking) or by issuing or amending guidance documents:

- C More direct access to the reduced reporting and monitoring available under the Discharge Monitoring Reports (DMRs) provisions of the Clean Water Act. EPA intends to modify the current (1996) burden reduction guidance for DMRs to allow Achievement Track membership to substitute for certain screening requirements set out in that document.
- C Greater flexibility under the Best Available Control Technology (BACT) requirement of the Clean Air Act. For Achievement Track facilities that may not be able to begin construction within 18 months of their BACT determination, EPA would encourage states to extend the applicability period through a simplified control technology review. EPA intends to recommend that the states adopt this simplified review.
- C More advantageous terms for Achievement Track facilities under the State Revolving Funds (SRF) program of the Clean Water Act, such as reduced loan rates and extended pay-back terms. EPA intends to provide materials to states that will encourage them to incorporate this change into their SRF policies.
- C A greater opportunity for expedited review of new reduced risk pesticide products under the Federal Insecticide, Fungicide and Rodenticide Act. If all of a pesticide registrant's U.S. pesticides manufacturing facilities are participants in the Achievement Track, this participation would become an additional factor that EPA would use in granting an expedited review. EPA would add participation to the list of factors through administrative action.

EPA also is considering changes to its current regulatory programs to offer incentives to Achievement Track facilities. These incentives will be developed under a coordinated Performance Track rulemaking. They include:

- C Reducing the frequency of reports required under the Maximum Achievable Control Technology (MACT) provisions of the Clean Air Act. In this incentive, EPA intends to reduce significantly the frequency of required MACT reporting for all Achievement Track facilities. EPA also intends to further reduce reporting reductions for Achievement Track facilities that achieve MACT or better emission levels through pollution prevention methods such as process changes. EPA intends to accomplish this through a single generic rulemaking covering all MACT standards.
- C Streamlined monitoring, reporting, and other procedural requirements for Publicly-Owned Treatment Works (POTWs) in the Achievement Track.
- C Reducing the reporting costs for POTWs in the Achievement Track that must publish notices of violations by facilities that use their services. These POTWs would be allowed to use the Internet rather than paid newspaper notices.
- C The opportunity for Achievement Track facilities to consolidate reporting under various environmental statutes into a single report. EPA expects that this consolidated reporting would be phased in with a pilot program, and potentially followed with a larger program. This incentive may require rulemaking.

Finally, EPA is determining the feasibility of an additional set of incentives or activities. These include the following provisions:

- C The opportunity for expedited review for companies that submit Premanufacturing Notifications (PMNs) under the Toxic Substances Control Act, if the substance is manufactured in an Achievement Track facility and the applicant uses EPA's Pollution Prevention Framework in preparing the PMN submission. This incentive would require rulemaking.
- C Granting authority for Achievement Track facilities to accumulate wastes for up to 180 days (double the current limit of 90 days) before triggering the requirement for obtaining a Resource Conservation and Recovery Act (RCRA) Part B storage permit. This incentive would require rulemaking.

EPA will identify and evaluate other incentives that may be made available to participants in the Achievement Track, and later in the Stewardship Track, as the program matures. These would be implemented through the required administrative processes, including notice and comment rulemaking when that is appropriate.

C. **Implementation**

Application materials are available either from the Performance Track web site or from the Performance Track Information Center.⁷ The implementation process is based on the following principles:

- C Fair, effective, and timely evaluation of applications;
- C Timely response to concerns of participants and community stakeholders;
- C Close cooperation among EPA offices and with state and tribal agencies;
- C Ongoing evaluation of the Achievement Track, with the goal of continuous improvement as it matures; and
- C Low transaction costs, consistent with achieving the goals of the Achievement Track.

This section provides an overview of EPA's approach to implementing the Achievement Track. It covers: (1) the application and notification process; (2) continued compliance; (3) the protocol for site visits; (4) the Annual Performance Report; and (5) removal from the program.

⁷The Performance Track Information Center can be contacted through email at ptrack@indecon.com or by telephone at 1-888-339-PTRK (7875).

1. Application and Notification Process

A facility formally applies for the Achievement Track by submitting the application form. EPA uses the information on the form (with the appropriate self-certifications), the results of the compliance screening, and information from consultations with EPA regional offices and state agencies in evaluating a facility's qualifications. EPA will not conduct site visits as a part of the formal selection process. However, EPA regional offices and state agencies may, on occasion, request a program site visit with an applicant when more information on a facility's qualifications is needed.

EPA will first review the application for completeness and notify the facility when the substantive review has begun. An EPA committee, made up of representatives from headquarters and regional offices, will conduct a substantive review. Through the appropriate regional office, EPA will consult with the state in which the facility is located to help determine the facility's eligibility for the Achievement Track. As part of this review, EPA will also conduct a compliance screen to evaluate the facility's past performance record.

A facility that is accepted into the Achievement Track will receive written notification from EPA. EPA will announce that a facility has been accepted through the Performance Track web site. A facility will be accepted for participation in the program for a period of three years. A facility that is not accepted will receive a brief explanation for EPA's decision.

Once a facility is accepted, it becomes eligible for the incentives offered in the Achievement Track. It will become eligible for other incentives as they are formally added to the program. EPA's standard acceptance letter will define the specific incentives available at the time of acceptance and the conditions under which they are granted or may be used (e.g., the conditions for the use of the program logo). EPA will notify participants of other incentives as they become available.

A facility should understand that its participation in the Achievement Track program is discretionary with EPA, that it may not challenge a decision to be rejected or removed from the program, and that the fact of its participation is not relevant to any issue of law or fact in any legal enforcement proceeding for violations of environmental requirements.

The first application period for the Achievement Track will begin on July 5, 2000 and end on September 30, 2000. Facilities that submit applications by September 1, 2000 and are accepted will qualify as Charter Members of the Achievement Track. These will be announced in a special recognition ceremony in late November 2000. All other selections from the first application period will be announced in December 2000. EPA plans to open a second application period in the first quarter of 2001.

2. Continued Compliance

This program recognizes and promotes improved environmental performance, but is built on a foundation of sustained compliance. There are several components of this program that help to assure continued compliance, such as an EMS that meets specified criteria (including compliance with legal requirements), compliance self-audits, and an annual certification that the facility is meeting the program entry criteria and is continuing to maintain compliance. In recognition of these and other program elements, and of good faith participation in this program, facilities will not be subject to greater enforcement scrutiny solely as a result of their participation in the Achievement Track.

Compliance issues may arise from time to time at an Achievement Track facility. This notice describes how Achievement Track facilities can quickly and efficiently address these instances. In fact, EPA expects that a vigorous, performance- and compliance-focused EMS will identify for prompt correction any instances of actual or potential non-compliance. In general, facilities are rewarded for their self-identification, correction and prompt disclosure of violations through penalty mitigation under EPA's Audit Policy, and Achievement Track participants will likewise be able to avail themselves of this compliance incentive, under the conditions specified in the Policy. In addition, EPA recognizes that violations may be discovered during the course of an on-site Achievement Track program visit. EPA similarly will allow the application of the Audit Policy to violations discovered in this manner, provided that the facility could not reasonably be expected to have known about or identified the violation prior to the on-site visit. Finally, in the unlikely event that an Achievement Track facility becomes subject to an enforcement action, EPA will consider, as a discretionary factor in the assessment of penalties, the facility's good faith participation in the program as an indication of the facility's good faith efforts to comply.

3. Protocol for Site Visits

To evaluate the effectiveness of the Achievement Track program, EPA will conduct program site visits with a limited number of facilities each year. During a program site visit, a facility will make available materials that directly support its participation in the Achievement Track, including the EMS, progress on performance commitments, and information on community outreach. The protocol for arranging and conducting these site visits is:

- C A facility will receive notice in advance of the visit and have an opportunity to schedule the timing with EPA to accommodate facility production schedules and deadlines.
- C The scope of the visit will be to assess the facility's implementation of the Achievement Track program, including its EMS, its progress in meeting its performance commitments, and its public outreach efforts.

- C The visit may include representatives from EPA headquarters, the EPA regional office, the state environmental agency, and (subject to the approval of the facility) possibly from the local community and other Achievement Track facilities.
- C The visit will be conducted according to a written protocol that will be made available to the facility well in advance of the visit. EPA expects that the visits would take from a few hours to a full working day, depending on the size and complexity of the facility.
- C EPA will visit up to twenty percent of participants in a given year. Facilities may request a program site visit from EPA.

4. Annual Performance Report

To remain in the Achievement Track, a participant will complete and submit an Annual Performance Report to EPA and the public. The purposes of this report are to provide information on the effectiveness of the program, to demonstrate the facility's progress toward its performance commitments, and to ensure that the facility is maintaining its qualifications under the program. This brief summary report may be submitted electronically or in writing. A draft format will be available on the Performance Track web site. The public will have an opportunity to comment on the format before it becomes final.

The Annual Performance Report will include the following categories of information:

- C Summary of the EMS performance (based on objectives and targets), including a summary of the EMS and compliance audits performed and any corrective action taken;
- C Brief progress report on the facility's performance commitments;
- C Summary of the facility's public outreach activities; and
- C Self-certification that the participant continues to meet the Achievement Track criteria.

The report will be due approximately one year after acceptance into the program, and annually thereafter. EPA will notify the facility of the due date in the acceptance letter. EPA is not planning to prescribe a means for public transmission of the report but will provide a menu of options from

which participants may choose (e.g., company web site, publication in local press, mailings). EPA is considering providing specialized assistance in this area for small facilities.

A facility should maintain on-site the supporting documentation used to prepare its Annual Performance Report and make this documentation available to EPA upon EPA's request.

5. Removal from the Achievement Track

There may be cases when a facility encounters significant performance problems that may warrant its removal from the Achievement Track. At EPA's discretion, a participant may be removed from the Achievement Track for such reasons as falsifying information in the application or Annual Performance Report, failing to file an Annual Performance Report, misrepresenting environmental performance in advertising or marketing claims, or for compliance problems that would be seen as inconsistent with the Achievement Track entry criteria.

EPA expects that a participating facility will continue to meet the Achievement Track criteria, such as maintaining its EMS and conducting appropriate public outreach, while it is in the program. Failure to meet the EMS and public outreach commitments could constitute grounds for removal. EPA also expects that a facility will strive to meet the performance goals stated in its application to the program. However, facilities are encouraged to establish ambitious goals, which they may not always be able to meet. Inability to meet the facility's performance commitments (as discussed under Section A.2) will not, in and of itself, be a cause for removal from the program. However, an inability to make any progress or a decline in facility performance could result in removal from the Achievement Track.

Should EPA decide that it may be necessary to remove a facility from the Achievement Track, EPA intends to provide the facility with notice of its intention. The facility will be allowed thirty days to respond by taking corrective measures. If corrective measures resolve the issues, EPA will withdraw its notice of intention. A facility may also withdraw from the program at any time by notifying EPA of its intent in writing. Once an entity leaves the Achievement Track, voluntarily or at EPA's discretion, it must relinquish the continued use of any and all incentives associated with participation in the Achievement Track.

D. The State Role and Relationship

The National Environmental Achievement Track will rely on EPA's partnership with state environmental agencies (and, where applicable, Indian tribes) for its long term success. State agencies run many federally-delegated programs and are responsible for important incentives (e.g., changes in permitting, reporting, and inspection policies). States are likely to have more frequent contact with facilities, making each state's relationship with program participants key to overall success. In addition, many states have programs with similar objectives—such as a commitment to improved environmental performance (beyond what is required by law), EMS use, public involvement, and a strong compliance history. Several state programs start with tiers that may serve as an “on-ramp” to the Achievement Track.

EPA has consulted extensively with the states sponsoring programs similar to the Achievement Track, and with many other states that do not have such a program but that are interested in the concept. In May 2000, EPA brought 20 state officials together in a national forum to discuss program design and implementation. Senior EPA officials have also visited or spoken with commissioners from states that are leading the way in offering recognition and incentives to top performers.

EPA will form a joint committee of selected state and EPA officials to monitor and improve this program as it is implemented. Based on discussions with state leaders, EPA has developed specific principles to guide this relationship. EPA will:

- C Work closely with designated state contacts, and include states in decisions on facilities within their jurisdiction, with the objective of having no surprises between EPA and the state;
- C Minimize duplication with state efforts and build on existing state programs to the extent possible;
- C Respect state programs with different policy and environmental objectives, and work with states to minimize inconsistencies with national objectives and actions;
- C Encourage participation by all the states, tailored to state interests and capabilities; and
- C Work jointly with the states to monitor implementation and seek continuous improvement in the program.

All states will be affected in some way by this program. However, the degree of involvement by each state will vary, based on the number of applicants and the level of state interest. EPA assumes, at a minimum, that states will want to be informed of actions relating to facilities under their jurisdiction and to have the opportunity to conduct their own compliance screening. Conducting even minimal screening and providing a central point of contact poses a new workload on state programs. EPA will seek to provide financial and technical assistance to states.

EPA has been working closely with states that have similar programs, and will continue to work with them to align and integrate national and state programs as much as possible. EPA envisions establishing a form of reciprocity for all equivalent state and national elements. For each element designated as equivalent, qualification at the state level would mean automatic qualification at the national level, and vice versa. EPA welcomes the interest expressed by many states that want to participate actively in the national program. These states can also play a major role in informing participants in existing programs of the opportunities and eligibility requirements of the Achievement Track, as well as in evaluating and monitoring the national program over time.

EPA will work closely with states that are establishing new programs, to achieve maximum compatibility between state and national efforts. For example, EPA could facilitate peer exchanges among states, and facilitate contact with EPA Performance Track and program office personnel. EPA will work with these states to develop complementary application procedures.

EPA will invite all states, including those without similar programs, to support the national program as much as they are able. In these cases, EPA will consider providing support for compliance screening and selected site visits in the event that a state cannot perform these activities. At a minimum, these states will be asked to designate a contact to receive notification of EPA actions.

In the near term, after consulting with states, EPA will decide which applicants qualify for the national program. As the program matures, EPA will work with the states to determine the most appropriate long term state role in implementing the program.

E. Small Business Participation

Any program for improving environmental performance must aim for participation by small businesses and other small entities, such as local governments. EPA is making every effort to make the Achievement Track accessible for small entities. This effort is reflected in several aspects of the design. For example, depending on the nature and extent of a facility's operations, the EMS for a small facility may be simpler than one for a larger, more complex facility. For the same reason, a small facility may have fewer environmental aspects. In addition, a small facility is not asked to make as many performance commitments as other participants.

EPA has held numerous discussions with representatives of small business interests and is encouraging participation by qualified small businesses and their facilities. In addition, EPA may create a more active and focused developmental program for small businesses and other small entities, with the goal of helping to expand their capacities for participation in the Achievement Track and, later, in the Stewardship Track. This program would build upon existing EPA activities, such as the Sustainable Industry Program, Design for the Environment, EMS projects with local governments, other partnership programs, and compliance assistance programs for small entities.

III. THE NATIONAL ENVIRONMENTAL STEWARDSHIP TRACK

In the National Environmental Stewardship Track, to be implemented in 2001, EPA envisions a higher level of performance and commitment than in the Achievement Track. The Stewardship Track would also involve more substantial recognition and flexibility for participating facilities and companies. Applicants for the Stewardship Track would be expected to have met the qualifications of the Achievement Track but also to have demonstrated their qualifications in other areas.

EPA considers it appropriate to develop a Stewardship Track that allows for participation by companies as well as individual facilities within a company. These could be designed as two related but separate programs or as an integrated one that links facility- and company-level performance.

The Stewardship Track could also differ from the Achievement Track by incorporating differences among economic sectors in the program's design. In this aspect, EPA will build upon sector-based initiatives already underway, such as Design for the Environment and the Sustainable Industry Program.

EPA intends to develop the Stewardship Track while it is implementing the Achievement Track. In developing the Stewardship Track, EPA intends to follow these steps:

- C Hold focus group discussions with stakeholders to discuss design elements, including appropriate incentives.
- C Assess existing sector initiatives focused on improving environmental performance among sectors to determine their applicability.
- C Hold public meetings to present and discuss the preliminary program design.
- C Release a draft document for public comment.

- C Make a formal announcement of the Stewardship Track program.
- C Solicit the initial round of applications.

IV. THE EPA ADMINISTRATOR'S ENVIRONMENTAL AWARDS PROGRAM

Concurrent with the launch of the National Environmental Performance Track program, EPA is establishing an Administrator's environmental awards program to recognize the highest level of environmental performance and leadership in the business sector. The awards will be given once a year to a select number of organizations whose exemplary environmental accomplishments deserve special attention and recognition. Building on the tenets of the Performance Track, the Administrator's environmental awards will spotlight companies whose innovations, technological advancements, or integrated management systems achieve significant breakthroughs in environmental performance and management. The criteria for determining winners and the selection process will be announced in the spring of 2001, with the first award presented approximately six months later.